

RICHARD O. AND MARGARET MORGAN

IBLA 72-431

Decided March 23, 1973

Appeal from a decision of the Riverside District Office rejecting Mining Claim Occupancy Act purchase application R-969, and offering instead a lease under the Small Tract Act.

Affirmed.

Federal Employees and Officers: Authority to Bind Government

An applicant can gain no right to public land by reliance upon erroneous or unauthorized statements of a Bureau of Land Management employee.

Mining Occupancy Act: Qualified Applicant -- Trespass: Generally

Where residential owner-occupants of improvements of a mining claim voluntarily relinquish the claim pursuant to the filing of an application under the Mining Claim Occupancy Act and they are found not to be qualified applicants under the Act, their continued occupancy thereafter is technically a trespass, for which the United States may seek and collect damages unless the occupancy is regularized under some other provision of law.

Small Tract Act: Generally

It is not an abuse of the Secretary's discretion under the Small Tract Act to offer an applicant a renewable five-year lease when he had requested fee title where it appears that a more permanent tenure would not comport with good land management practices.

Mining Occupancy Act: Generally -- Rules of Practice: Hearings

An applicant under the Mining Claim Occupancy Act has no right to a hearing as a matter of due process, and none will be granted where he fails to allege facts which, if proven, would entitle him to relief.

APPEARANCES: Richard O. and Margaret Morgan, pro se.

OPINION BY MR. STUEBING

Richard O. Morgan and Margaret Morgan have appealed from a May 5, 1972, decision of the Riverside District Office, Bureau of Land Management, which rejected their application to purchase a portion of the Gossam Cap No. 3 mining claim under the Act of October 23, 1962, as amended 30 U.S.C. §§ 701 et seq. (1970). Rejection was based upon the District Office's finding that the application itself fails to show that there was a residence on the claim as of July 23, 1955, as required by the Act. Consequently, it was determined that the applicant is not a "qualified applicant" as that term is defined in the Mining Claim Occupancy Act, 30 U.S.C. § 702 (1970).

However, the District Office's decision did grant relief in the form of a five-year lease offered under the Small Tract Act of June 1, 1938, as amended 43 U.S.C. § 682a (1970). The lease is to be renewable at the Bureau's option if the land is not needed for a federal purpose. The rental under the lease is set at \$ 82 per year and is subject to revision at five-year intervals. For acceptance of the lease, the decision required that the applicants sign and return the lease which was enclosed with the opinion and submit the first two years rent plus a \$ 10 filing fee. The applicants have sent in \$174, the amount of the required two-years' rent plus the filing fee. 1/

The Morgans appeal from the District Office's rejection of their application under which they requested a fee title. Appellants submit two statements of reasons. In their original statement of reasons, appellants assert that the Bureau has reneged on a promise made in January 1971 by a Bureau official which was to the effect that applicants would be given a fee title to three to five acres. Appellants' additional statement of reasons states that a second Bureau employee later visited them and told them that the Bureau was not giving fee titles anymore but that they would receive a lifetime lease. On the basis of the employees' comments, appellants assert a right to receive a fee title to the tract on which their home is located.

1/ The appellants have paid the \$174 as a "show of good faith". However, we can find no evidence that they have signed the required lease. Their acceptance of the lease would, of course, moot their appeal.

Appellants do not contend in their appeal, nor is it shown on the face of their purchase application, that they are qualified applicants within the meaning of the Mining Claim Occupancy Act, supra. They state in their application that they did not reside on the land until 1960. The Act requires that a residential occupant-owner of the improvements must have been using the site as a principal place of residence as of July 23, 1955. Therefore, the application was correctly rejected.

Appellants turn to an October 18, 1971, land report prepared by a Realty Assistant in which he has typed under the form heading "Type of Action" the words "Resolution of Occupancy Trespass". No damages were assessed under the trespass. Nevertheless, appellants feel that this makes them appear as criminals and demand that the Realty Assistant write them a letter of apology and have the reference to resolution of trespass removed from their file.

30 U.S.C. § 706 of the Mining Claim Occupancy Act states:

(b) Except where a mining claim embracing land applied for under this chapter by a qualified applicant was located at a time when the land included therein was withdrawn or otherwise not subject to such location, no trespass charges shall be sought or collected by the United States from any qualified applicant who has filed an application for land in the mining claim pursuant to this chapter, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary of the Interior or the voluntary relinquishment of the mining claim, whichever occurs earlier. (Emphasis added).

Appellants voluntarily relinquished their claim in 1967 pursuant to the filing of an application under the Act. Later, in the 1972 District Office decision, they were determined not to be qualified applicants. Therefore, their continued occupancy was technically a trespass for which the United States may seek and collect damages unless the occupancy is regularized under some other provision of law. Here, as noted above, an offer to regularize the occupancy has been made under the Small Tract Act, supra.

The Morgans point out that under that Act, the Secretary of the Interior is authorized, in his discretion, to sell or lease a tract, not to exceed five acres, to a qualified applicant. As stated above, appellants have been offered a five-year lease under this Act. However, they contend that not to sell them 1.37 acres is an abuse of the Secretary's discretion; that he has been led to abuse

his discretion because he relied upon the erroneous conclusions of the land report prepared concerning their land. The land report concludes that appellants' presence hinders the proper use of the tract, which should be included with the area surrounding it, for use as open space for outdoor recreation, for grazing and wildlife purposes and possibly for future highway construction. In controversion, appellants state that their residence on the land is very helpful in preventing vandalism and destruction of nearby government property. Also, they contend that their presence helps to prevent fires and is beneficial to the cattle industry by discouraging people from shooting cattle. They state that their ownership would not interfere with future highway plans.

We do not view it as an abuse of the Secretary's discretion under the Small Tract Act to offer the applicants a renewable five-year lease where it appears that a more permanent tenure would not comport with good land management practices. Arland E. and Eldora R. Purington, 10 IBLA 118 (1973). The report shows that the applicants' tract is an isolated inholding which is disrupting a large block of land being managed for open space and outdoor recreation and for possible future development of the area road systems.

Appellants claim that they have a right to receive a fee title to the tract on which their house is located because of statements to that effect made by Bureau employees. An applicant can gain no right to public land by reliance on erroneous or unauthorized statements made by a Bureau employee. Harold E. and Alice L. Trowbridge, A-30954 (January 17, 1969); Southwest Salt Company, 2 IBLA 81, 78 I.D. 82 (1971); Mark Systems, Inc., 5 IBLA 257 (1972); Arland E. and Eldora R. Purington, *supra*. Therefore, appellants receive no benefit from reliance on the statements made by the Bureau employees. 43 CFR 1810.3.

On appellants' final point, their demand for a hearing, the rule is established that an applicant under the Mining Claim Occupancy Act is not entitled to a hearing as a matter of due process, United States v. Walker, 409 F.2d 477 (1969), and a hearing will not be granted where the applicant does not allege facts, which if proved, would entitle him to relief. Harold E. and Alice L. Trowbridge, *supra*, and cases cited therein; Freda Turner, 76 I.D. 105 (1969); see Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966). Appellants have alleged no facts, aside from what they consider to be inequities, upon which relief may be granted. Therefore, they have no right to a hearing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Joseph W. Goss, Member

Martin Ritvo, Member

